



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR part 658

[Docket No. FHWA-2018-0042]

[RIN 2125-AF86]

FAST Act Section 5516 “Additional State Authority” Implementation

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA requests comments on implementation of Fixing America’s Surface Transportation (FAST) Act Section 5516 “Additional State Authority,” which provides the State of South Dakota the opportunity to update and revise its routes for Longer Combination Vehicles (LCVs), and commercial motor vehicles (CMVs) with 2 or more cargo-carrying units.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments by any of the following methods:

- Fax: 1-202-493-2251;
- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590;

- Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal:
<http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number (FHWA-2018-0042) or Regulatory Identification Number (RIN) for this rulemaking (2125-AF86). Note that all comments received will be posted without change to: <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. John Berg, Office of Freight Management and Operations (HOFM), (202) 740-4602, or via e-mail at John.Berg@dot.gov, or Mr. William Winne, Office of the Chief Counsel (HCC-40), (202) 366-1397, or via e-mail at William.Winne@dot.gov. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online under the docket number noted above through the Federal eRulemaking portal at: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days this year. Please follow the online instructions.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at: <http://www.archives.gov/federal-register> and the Government Publishing Office's Web site at: <http://www.gpo.gov/fdsys>. In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be viewed at: www.dot.gov/privacy.

Physical access to the Docket is available at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

The FHWA proposes to amend its regulations in 23 CFR 658 Appendix C (Appendix C), governing vehicles subject to 23 U.S.C. 127(d) (LCVs), and 49 U.S.C. 31112 (CMVs with 2 or more cargo-carrying units), in the State of South Dakota.

This action is necessary to implement the provisions of Section 5516 of the FAST Act (Pub. L. 114-94). The Conference Report accompanying the FAST ACT (House Report 114-357, December 1, 2015 at page 506) states, "Conferees expect that the implementation of section 5516 will provide the maximum flexibility possible to re-route [LCVs] in the affected state to divided highways, highway facilities designed for freight transportation, or along routes that will enhance overall highway safety."

In an August 30, 2016, letter, the South Dakota Department of Transportation (SDDOT) requested that FHWA add additional routes to South Dakota's LCV network and provided a map and listing of those routes in Appendix C.

All of the proposed routes are on the National Network (NN), which is comprised of the Interstate System and routes designated as qualifying Federal-aid Primary System highways. Combinations with a cargo-carrying length of 81.5 feet or less may use all NN routes. Combinations with a cargo-carrying length over 81.5 feet are restricted to the Interstate System and the routes listed in Appendix C. This listing of routes is applicable to both double trailers and triple trailers.

Currently designated LCV routes in South Dakota include:

Highway	From MRM	To MRM	Length (miles)	From	To
I-29	0.00	252.65	252.5	Iowa	North Dakota
I-90	0.00	412.52	413.0	Wyoming	Minnesota
I-190	0.00	2.03	2.1	Rapid City	I-90
I-229	0.00	10.83	11.3	I-29	I-90
US14	333.55	418.11	84.4	S Jct US281	W Jct US14 Bypass at Brookings
US14 B	418.11	421.32	3.6	W Jct US14 at Brookings	I-29 Exit 133 at Brookings
US85	44.69	154.88	109.4	I-90 Exit 10 at Spearfish	North Dakota
US281	70.30	117.37	46.8	I-90 Exit 310 at Plankinton	S Jct US14 west of Huron
US281	194.53	229.27	33.0	8 th Avenue in Aberdeen	North Dakota
SD50	383.82	416.87	33.0	Burleigh Street in Yankton	I-29 Exit 26
Total			989.2		

South Dakota proposes adding the following routes:

Highway	From MRM	To MRM	Length (miles)	From	To
US12	80.50	366.36	282.9	North Dakota	I-29
US14	227.74	333.55	105.5	W Jct US83 at Ft. Pierre	S Jct US281 west of Huron
SD37	73.08	95.64	22.7	I-90	E Jct SD34
SD34	330.96	341.20	10.2	W Jct SD37	E Jct SD37
SD37	105.80	127.70	21.8	W Jct SD34	US14 at Huron
US18B	38.71	40.54	1.8	W Jct US18 at Hot Springs	E Jct US18 at Hot Springs
US18	40.54	62.25	21.7	E Jct US18B at Hot Springs	US385 at Oelrichs
SD79	26.75	74.70	48.0	US18	US16B
US16B	67.64	72.95	5.4	SD79	I-90

US83	87.24	119.79	32.5	I-90	W Jct US14 at Ft. Pierre
US83	138.73	174.10	35.3	E Jct US14	W Jct US212
US212	219.42	220.20	0.9	W Jct US83	E Jct US83
US83	175.14	205.92	30.7	E Jct US212	S Jct US12
US83	212.51	240.73	28.1	N Jct US12	North Dakota
US212	0.00	13.46	13.4	Wyoming	US85 at Belle Fourche
US281	124.25	153.38	29.2	N Jct US14	W Jct US212 at Redfield
US212	306.46	306.97	0.5	W Jct US281 at Redfield	E Jct US281 at Redfield
US281	153.89	194.24	40.4	E Jct US212 at Redfield	US12 at Aberdeen
Total			731.1		

Section-by-Section Discussion of the Proposed Changes to 23 CFR 658 Appendix C

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 restricts the operation of LCVs on the Interstate Highway System and CMV combinations with two or more cargo-carrying units on the NN to the types of vehicles in use on or before June 1, 1991, subject to State rules, regulations, or restrictions that were in effect on that date. A listing of these vehicles and restrictions is found in Appendix C.

The FHWA proposes to revise Appendix C for the State of South Dakota as authorized in Section 5516 of the FAST Act, which provides South Dakota “the opportunity to update and revise the routes designated as qualifying Federal-aid Primary System highways under section 31111(e) of title 49, United States Code . . .”. The FAST Act Conference Report states further, “Conferees expect that the implementation of section 5516 will provide the maximum flexibility possible to re-route longer combination vehicles in the affected state to divided highways, highway facilities designed for freight transportation, or along routes that will enhance overall highway safety.” H. Rept. 114-357 at 506 (2015).

In an August 30, 2016, letter, SDDOT requested that FHWA add the additional routes to South Dakota's LCV network, and provided a map, listing of those routes, and safety information for LCV routes in the State. All of the proposed routes are on the NN, which is comprised of the Interstate System and routes designated as qualifying Federal-aid Primary System highways.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and USDOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order (EO) 12866 or within the meaning of DOT regulatory policies and procedures. The proposed amendments would

update and revise the routes of the vehicles covered by 23 U.S.C. 127(d) (LCVs), and 49 U.S.C. 31112 (CMVs with 2 or more cargo-carrying units), in South Dakota, as found in 23 CFR 568 Appendix C. In addition, this action complies with the principles of EO 13563. After evaluating the costs and benefits of these proposed amendments, FHWA anticipates that the economic impact of this rulemaking would be minimal. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The FHWA anticipates that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not necessary. Finally, this proposed rule is not an EO 13771 regulatory action because it is not significant under EO 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601-612), FHWA has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, FHWA anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would update the routes of the vehicles covered by 23 U.S.C. 127(d) (LCVs), and 49 U.S.C. 31112 (CMVs with 2 or more cargo-carrying units), in South Dakota, as found in 23 CFR 568 Appendix C. Therefore, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has determined that this NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any 1 year (when adjusted for inflation) in 2014 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector. The FHWA will publish a final analysis, including its response to public comments, when it publishes a final rule.

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in EO 13132. The FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This EO applies because State and local governments would be directly affected by the proposed regulation, which is a condition on Federal highway funding. Local entities should refer

to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that the proposed rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this proposed rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*). Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an Environmental Impact Statement ; those that normally require preparation of an Environmental Assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The proposed action is the amendment to the routes listed for vehicles covered by 23 U.S.C. 127(d) (LCVs), and 49 U.S.C. 31112 (CMVs with 2 or more cargo-carrying units) in South Dakota as found in 23 CFR 568 Appendix C, as allowed by Section 5516 of the FAST-Act. This proposed action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives). The FHWA has evaluated whether the proposed action would involve unusual circumstances or extraordinary circumstances and has determined that this

proposed rulemaking action would not involve such circumstances. As a result, FHWA finds that this proposed rulemaking would not result in significant impacts on the human environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed rule under EO 13175, and believes that it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal law. This proposed rule would not impose any direct compliance requirements on Indian Tribal governments nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed rule under EO 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this proposed action is not a significant energy action under the EO and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would effect a taking of private property or otherwise have taking implications under EO 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of EO 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR part 658: Grant programs-transportation, Highways and roads, Motor carrier size and weight.

Issued on: December 21, 2018.

Brandye L. Hendrickson
Deputy Administrator
Federal Highway Administration

In consideration of the foregoing, FHWA proposes to revise 23 CFR part 658 Appendix C for South Dakota as follows:

**PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS-LENGTH,
WIDTH AND WEIGHT LIMITATIONS**

1. The authority citation for part 658 is amended read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114;
sec. 347, Pub. L. 108-7, 829; sec. 1309, Pub. L. 109-59, 119 Stat. 1219; sec. 115,
Pub. L. 109-115, 119 Stat. 2408; sec. 5516, Pub. L. 114-94, 129 Stat. 1312; 49
CFR 1.81(a)(3).

2. Amend Appendix C to Part 658 by revising the “State: South Dakota, Combination:
Truck tractor and 2 trailing units – LVC” entry to read as follows:

Appendix C to Part 658—Trucks Over 80,000 Pounds On The Interstate System And
Trucks Over STAA Lengths On The National Network

STATE: SOUTH DAKOTA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: For all combinations, the maximum gross weight on two or more consecutive axles is limited by the Federal Bridge Formula but cannot exceed 129,000 pounds. The weight on single axles or tandem axles spaced 40 inches or less apart may not exceed 20,000 pounds. Tandem axles spaced more than 40 inches but 96 inches or less may not exceed 34,000 pounds. Two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each, provided the overall distance between the first and last axles of the tandems is 36 feet or more. The weight on the steering axle may not exceed 600 pounds per inch of tire width.

For combinations with a cargo-carrying length greater than 81.5 feet the following additional regulations also apply. The weight on all axles (other than the steering axle) may not exceed 500 pounds per inch of tire width. Lift axles and belly axles are not considered load-carrying axles and will not count when determining allowable vehicle weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: For all combinations, a semitrailer or trailer may neither be longer than nor weigh 3,000 pounds more than the trailer located immediately in front of it. Towbars longer than 19 feet must be flagged during daylight hours and lighted at night.

For combinations with a cargo-carrying length of 81.5 feet or less, neither trailer may exceed 45 feet, including load overhang. Vehicles may be 12 feet wide when hauling baled feed during daylight hours.

For combinations with a cargo-carrying length over 81.5 feet long, neither trailer may exceed 48 feet, including load overhang. Loading the rear of the trailer heavier than the front is not allowed. All axles except the steering axle require dual tires. Axles spaced 8 feet or less apart must weigh within 500 pounds of each other. The trailer hitch offset may not exceed 6 feet. The maximum effective rear trailer overhang may not exceed 35 percent of the trailer's wheelbase. The power unit must have sufficient power to maintain 40 miles per hour. A "LONG LOAD" sign measuring 18 inches high by 7 feet long with black on yellow lettering 10 inches high is required on the rear. Offtracking is limited to 8.75 feet for a turning radius of 161 feet.

Offtracking Formula = $161 - [161^2 - (L_1^2 + L_2^2 + L_3^2 + L_4^2 + L_5^2 + L_6^2 + L_7^2 + L_8^2)]^{1/2}$

NOTE: L_1 through L_8 are measurements between points of articulation or vehicle pivot points. Squared dimensions to stinger steer points of articulation are negative. For two trailing unit combinations where at least one trailer is 45 feet long or longer, all the dimensions used to calculate offtracking must be written in the "Permit Restriction" area of the permit along with the offtracking value derived from the calculation.

PERMIT: For combinations with a cargo-carrying length of 81.5 feet or less, a single-trip permit is required for movement on the Interstate System if the gross vehicle weight exceeds 80,000 pounds. An annual or single-trip permit is required for hauling baled feed over 102 inches wide.

For combinations with a cargo-carrying length greater than 81.5 feet, a single-trip permit is required for all movements. Operations must be discontinued when roads are slippery due to moisture, visibility must be good, and wind conditions must not cause trailer whip or sway.

For all combinations, a fee is charged for any permit.

ACCESS: For combinations with a cargo-carrying length of 81.5 feet or less, access is Statewide off the NN unless restricted by the South Dakota DOT.

For combinations with a cargo-carrying length greater than 81.5 feet, access to operating routes must be approved by the South Dakota DOT.

ROUTES: Combinations with a cargo-carrying length of 81.5 feet or less may use all NN routes. Combinations with a cargo-carrying length over 81.5 feet, are restricted to the Interstate System and:

Highway	From	To
US12	North Dakota State Line	Jct I-29 at Summit
US14	Jct US83 at Ft. Pierre	Jct US14B in Pierre
US14	Jct US14B east of Pierre	W Jct US14 Bypass at Brookings
US14B	Jct US14 in Pierre	Jct US14 east of Pierre
US14B	W Jct US14 at Brookings	Jct I-29 Exit 133 at Brookings
US16B	Jct SD79 south of Rapid City	Jct I-90 at Rapid City
US18	E Jct US18B at Hot Springs	Jct US385 at Oelrichs
US18B	W Jct US18 at Hot Springs	E Jct US18 at Hot Springs
US212	Wyoming State Line	Jct US85 at Belle Fourche
US212	W Jct US83 west of Gettysburg	E Jct US83 west of Gettysburg
US212	W Jct US281 in Redfield	E Jct US281 in Redfield
US281	Jct I-90 Exit 310 at Plankinton	S Jct US14 west of Huron
US281	Jct US14 north of Wolsey	W Jct US212 in Redfield
US281	E Jct US212 in Redfield	North Dakota State Line
US83	Jct I-90 near Vivian	Jct US14 at Ft. Pierre
US83	Jct US14 east of Pierre	W Jct US212 west of Gettysburg
US83	E Jct US212 west of Gettysburg	Jct US12 south of Selby
US83	Jct US12 west of Selby	North Dakota State Line
US85	I-90 Exit 10 at Spearfish	North Dakota State Line
SD34	W Jct SD37	E Jct SD37
SD37	Jct I-90 at Mitchell	E Jct SD34
SD37	W Jct SD34	Jct US14 at Huron
SD50	Burleigh Street in Yankton	Jct I-29 Exit 26
SD79	Jct US18 & US385 at Oelrichs	Jct US16B south of Rapid City

LEGAL CITATIONS: SDCL 32-22-8.1, -38, -39, -41, -42, and -52; and Administrative Rules

70:03:01:37, :47, :48, and :60 through :70.

[FR Doc. 2019-01170 Filed: 2/5/2019 8:45 am; Publication Date: 2/6/2019]